IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

WP(C).No. 32870 of 2006(K)

PETITIONER:

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1. JOY JOSEPH, PEON,
   KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.,
   PALA MAIN BRANCH, PALAI.

2. JOBY THOMAS, PEON,
   KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.,
   HEAD OFFICE, KOTTAYAM.

3. K.SETHUNATH, PEON,
   KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.,
   KOTTAYAM.

4. JOSE NELLIMALA, PEON,
   KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.,
   KOTTAYAM.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

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1. THE KOTTAYAM DISTRICT CO-OPERATIVE
   BANK LIMITED, KOTTAYAM, REPRESENTED BY
   ITS GENERAL MANAGER.

2. THE JOINT REGISTRAR OF CO-OPERATIVE
   SOCIETIES, KOTTAYAM.

3. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
   THIRUVANANTHAPURAM.

4. THE STATE OF KERALA, REPRESENTED BY
   ITS SECRETARY, DEPARTMENT OF CO-OPERATION,
   THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI. P.N. SANTHOSH
SRI T.R.RAMACHANDRAN NAIR, SC FOR R1

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

W.P.(C). 32870/2006

Dated this the 11th day of December, 2006

JUDGMENT

The writ petitioners are working under the first respondent, Co-operative Bank, Kottayam, for more than ten years, as peons, on temporary basis, from 25.11.1995, 24.1.1996, 8.7.1996 and 15.11.1995 respectively. It is therefore, prayed that the direction of the second respondent, the Joint Registrar of Co-operative Societies, Kottayam, dated 1.10.2001 and Ext.P6 order, the dismissal of the appeal by the Government of Kerala, in which the order of the second respondent was upheld by the Government, may be set aside and the writ petitioners may be allowed to continue in service, as peons, in the first respondent, bank.

2. I heard the elaborate arguments advanced by the learned Government Pleader, the learned Standing Counsel for the first respondent and the counsel for the writ petitioners.

3. In Secretary, State of Karnataka and others v. Umadevi (3) and Others (2006 (4) SCC 1), the regularisation of the irregularly appointed employees came up for consideration. In paragraph 53 of the judgment, the apex Court laid down the principle as how to regularise the irregular appointments of certain categories of persons. It is worthwhile, to reproduce it:

> "One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appoitments) as explained in S.V.Narayanappa, R.N.Nanjundappa and B.N.Nagarajan and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and

> their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme".

4. The learned Government Pleader had brought to my notice that in Ext.P1, the second respondent had directed to terminate the service of the writ petitioners, the temporary employees of the first respondent. Against the same, the writ petitioners came up before this Court,

preferring the writ petition. Simultaneously, the petitioners also preferred an appeal, challenging Ext.P1 dated 1.10.2001. As per the order dated 15.11.2006, the Government had dismissed the appeal preferred by the writ petitioners, upholding the order of the second respondent directing to terminate the service of the writ petitioners. Thus, it is clear that the writ petitioners continued in service, because of the orders passed by this Court in the writ petition preferred by them, and their continuance was till the appeal, challenging the order of the second respondent dated 1.10.2001, was pending with the Government.

5. Applying the principle laid down in paragraph 53 of Umadevi's case, cited supra, it could be seen that the writ petitioners did not continue for ten years and their continuance was only according to the order passed in the writ petition, preferred by them before this Court. In such situation, I am of the opinion that the principles laid down in Umadevi's case will not be applicable to the writ petitioners, as they did not continue for ten years

and, therefore, their irregular appointment cannot be regularised.

6. The above legal principle laid down in Umadevi's case (Supra) had been re-iterated by the Apex Court in Chief Commissioner of Income Tax, Bhopal v. M/s.Leena Jain and others (2006 AIR SCW 6066) decided on 20/11/2006.

7. Merely because few others had been regularised, as alleged by the petitioners, the same will not be a ground to give any direction to the Government to do the same illegal act in respect of the petitioners, as well. Therefore, I find that it is not legal to pass any order or direction, in this writ petition.

The writ petition is closed as above.

J.M.JAMES
JUDGE

mrcs